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IN THE

Supreme Court of the United States

BOARD OF EDUCATION OF INDEPENDENT SCHOOL DISTRICT NO. 92 OF POTTAWATOMIE COUNTY AND INDEPENDENT SCHOOL DISTRICT NO. 92 OF POTTAWATOMIE COUNTY, PETITIONERS,

v.

LINDSAY EARLS, LACEY EARLS, ET AL., RESPONDENTS.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

Brief of *Amici Curiae* American Academy of Pediatrics, National Education Association, American Public Health Association, National Association of Social Workers, NASW-Oklahoma Chapter, National Council on Alcoholism and Drug Dependence, Center for Law and Education, Loyola Child Law Center, and Lawyers for Children, Inc., In Support of Respondents

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Interest of *Amici Curiae*[*]

Amici are physicians, educators, social workers, substance abuse treatment providers, and child advocates. No less than the Petitioners in this case, we are profoundly concerned about the harm that substance abuse can wreak in the lives of young people. *See, e.g.,* Am. Acad. of Pediatrics ("AAP") Comm. on Substance Abuse, *Testing For Drugs of Abuse in Children And Adolescents*, 98 PEDIATRICS 305 (1996) (AAP recognizes "the abuse of psychoactive drugs as one of the greatest problems facing children and adolescents and condemns all such use"). *Amici* have witnessed firsthand the tragic consequences of youth substance abuse, and many of us devote our professional lives to understanding addiction, preventing substance abuse, and working to help troubled young people.

While *Amici* are sympathetic to the impulse to "do more" against illicit drugs that attracts parents and school boards to measures like the one at issue here – and we recognize that this Court has held that public school officials are not disabled from using school-based drug-testing in response to an "immediate crisis" situation, *Vernonia Sch. Dist. v. Acton*, 515 U.S. 646, 663 (1995) – we are concerned that such practices not become (as they surely will, if this one receives the Court's blessing) a first resort.

For reasons we explain herein, our experience – and a broad body of relevant research – convinces us that a policy like Tecumseh's *cannot* work in the way it is hoped to and will, for many adolescents, interfere with more sound prevention and treatment processes. Under such circumstances, the undeniably weighty interests in promoting and protecting adolescent health counsel judicial invalidation, not approval.

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[*]The parties have consented to the filing of this brief. It was not authored in any part by counsel for a party, and no one other than *Amici* and their counsel made a monetary contribution for its preparation or submission.

Preliminary Statement

At issue in this case is a policy that denies the benefits of participation in a broad range of non-athletic extracurricular activities to students who refuse to submit to school-administered suspicionless urine-testing and to individuals whose urine tests positive for certain drugs of abuse. J.A. 193-205. The record makes clear that the targeting of extracurricularly involved students was ***not*** the result of a School Board determination that (a) those students were *particularly likely* to use the substances tested for, *see, e.g.*, J.A. 101, 119, 127; (b) that the population covered was in greater need of deterrence than were other students; or (c) that the school's already-existing anti-drug policies, *see, e.g.*, Pet. Br. at 7, were not succeeding in preventing abuse – the District repeatedly represented that the tested-for substances were "not * * * a major problem." *See* J.A. 180. Nor did the safety considerations so energetically stressed in litigation, *see, e.g.*, Pet. Br. at 43, figure in the Policy's adoption. J.A. 155.

Rather, as the record and decisions below document, the Policy's genesis was in demands that the School Board do more about perceived student drug use, J.A. 85-8, and the decision to require urine tests from extracurricular participants stemmed from (1) desire to be "fair" to the initially targeted population – student-athletes – by providing that others would be tested, as well, J.A. 89, and (2) advice of counsel that the District would have a freer hand testing a subgroup whose submission was tied to involvement in "voluntary" school activities. J.A. 155.

These facts make the case extraordinary in Fourth Amendment jurisprudence. Although individualized suspicion is not an irreducible constitutional requirement, the Court's cases treat some quantum of suspicion as presumptively necessary – subject to a showing that a suspicion-based

approach will not work, *see Chandler v. Miller*, 520 U.S. 305, 318-19 (1997) – and never have permitted a policy targeting large numbers of individuals for intrusive searches for no better reason than that doing so might make searches of *other individuals* seem less unfair. *See National Treas. Employees Union v. Von Raab*, 489 U.S. 656, 681 (1989) (Scalia, J., dissenting) ("the impairment of individual liberties cannot be the means of making a point").

As such, this Policy should not withstand even a cursory Fourth Amendment examination, let alone the "careful[]" one the governing case law prescribes. *Chandler*, 520 U.S. at 314. In fact, as we show below, the necessary "context-specific" scrutiny, *id.*, discloses defects in this Policy that are more serious than found with measures rejected as merely "symbolic" by this and other courts. Unlike cases involving minor, but gratuitous, intrusions on privacy – which *Chandler* established as constitutionally "unreasonable," 520 U.S. at 318 – the Policy at issue here operates, in key respects, at cross purposes with the important objectives cited in its defense.

Summary of Argument

Amici do not part company with Petitioners in their appraisal of the health dangers that illicit drugs pose to young people or of the importance of preventing and treating youth addiction.[1] But precisely because what is at stake is so important, we believe that adult decision makers – parents, doctors, school boards, and courts – have a special obligation to promote policies that *realistically* promise to help young people

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[1]Several of *Amici* have adopted formal resolutions addressing youth substance abuse. *See, e.g.*, APHA Policy Statement 8817, *A Public Health Response To the War on Drugs: Alcohol, Tobacco & Other Drug Problems Among the Nation's Youth*; NEA Resolution C-3 (2001).

– and to resist measures, however well-intentioned, that are inconsistent with that objective.

Amici are concerned that the Policy at issue in this case fits the latter description. Experience teaches that whether a particular prevention approach will work depends critically on the perceptions and responses of its adolescent subjects, and involuntary, school-based urine-testing regimes of the sort at issue – because they are experienced as intensely intrusive and distrustful – are especially unlikely to work as intended.

The distinctive feature of the Policy at issue here – linking drug screening to participation in student extracurricular activities – does not allay these concerns. That qualification does little to limit the Policy's reach: such activities are a central part of the school experience, and students in Tecumseh and elsewhere participate at high rates. Nor is it one that makes intuitive sense: there is, on the contrary, a demonstrated, strong association between student extracurricular involvement and *abstinence* from drugs.

More important, there is growing recognition that extracurricular involvement plays a role in ***protecting*** students from substance abuse and other dangerous health behaviors. A policy that conditions participation on submission to an in-school urine testing regime not only risks denying those benefits to students who, out of principle or modesty, refuse to submit, but it is disproportionately likely to discourage "marginal," higher risk students – whose attachment to school is weakest, but who are in greatest need of protection.

Nor may it simply be assumed that the threat of detection through urinalysis will translate into decreases in unhealthy behavior even among those who *do* opt to participate in the covered activities. Policies like Tecumseh's leave open a third option: to continue extracurricular involvement, but to shift

from unhealthy behavior that the test might detect to abuse of substances it is unlikely to. Whether such shifting occurs as a result of sincere misunderstanding – *e.g.*, mistaken belief that substances not tested for, such as alcohol and tobacco, are less unhealthy than "illicit" drugs – or of more conscious defiance of the District's decision to "catch" its students, it seriously compromises any preventative effect.

Tecumseh's Policy should not be sustained as "treatment" either. Whether Petitioners are right to label it "non-punitive," the "consequences" the Policy does impose – exclusion from extracurricular activities and disclosure of the student's problem to those in the school environment deemed "need[ing] to know" – are still likely to toughen the already daunting challenge of recovery from substance abuse. Indeed, by placing the student's activity supervisor at the front lines of Policy enforcement, the District may close down what might otherwise be an important avenue of support for a young person seeking to turn away from drug involvement.

This points toward a final, far-reaching defect of the Policy. It injects the school and its personnel, unnecessarily, into a realm where parental and medical judgment should be preeminent. Unlike the policies upheld in cases claimed as precedent, *see Vernonia*; *New Jersey v. T.L.O.*, 469 U.S. 325 (1984), this Policy is anchored less in the school's core responsibilities for student safety and the integrity of the instructional process, than in a more generalized sense of concern for students' health problems.

Such concern, to be certain, is legitimate. Schools can and do play a pivotal role in promoting young people's health. But when school boards seek to advance these more general interests, they must seek to do so in ways that support, rather than undermine, the judgments of students' parents and doctors.

Tecumseh's Policy has, for no sufficient reason, disturbed this allocation of responsibility. The Policy operates in disregard for prevention and treatment principles that doctors and substance abuse experts view as fundamental, and it denies those parents who *want to* take primary responsibility for discouraging, punishing, and treating substance abuse – and not delegate that job to the School Board – the freedom to do so.

I. The Educational And Developmental Context Highlights The Policy's Constitutional Defects

This case concerns a Policy linking in-school urine testing to extracurricular involvement – an approach defended as needed to prevent adolescent substance abuse. As such, it fairly implicates precedents recognizing that high school students – and adolescents generally – are *different* from mature adults in ways that can be of constitutional dimension, *see, e.g., Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 682 (1986); *Ginsberg v. New York*, 390 U.S. 629, 638 (1968); *Ohio v. Akron Center for Repro. Health*, 497 U.S. 502, 520 (1990).

But Petitioners mistake the import of that principle and its significance for this case. While such differences have figured in cases rejecting constitutional rules that might impair public schools' discharge of day-to-day instructional responsibilities, *see Fraser*; *T.L.O.*; *Ingraham v. Wright*, 430 U.S. 651, 662 (1977), the Court has never embraced the general "relaxation" of scrutiny that Petitioners seek, Br. at 17. On the contrary, its cases acknowledge that school board majorities, no less than other governmental bodies, can threaten constitutional rights, *see West Virginia Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943), and that meaningful *protection* of those rights *also* requires taking account of the distinct capacities, experiences, and perceptions of adolescents, *see, e.g., Edwards v. Aguillard*, 482 U.S. 578, 584 (1987); *Lee v. Weisman*, 505 U.S. 577,

592-93 (1992).

A sensitive appreciation of the educational and developmental context, we believe, strongly reenforces the correctness of the Appeals Court's constitutional judgment here. The private interests against Tecumseh's Policy become weightier and its claimed benefits, more unlikely, when considered in light of the known realities of how adolescents benefit from school activities, how they are drawn toward (and protected from) substance abuse, how they perceive and respond to school policies – and how can adolescents differ from one another in these respects. *Cf.* J. Schulenberg, *et al.*, *Development Matters* in ADOLESCENTS, ALCOHOL & SUBSTANCE ABUSE 44 (Monti, *et al.*, eds., 2001) ("alcohol and other drug use among young people is embedded within the many developmental transitions that take place during adolescence and the transition to young adulthood").

II. Extracurricular Involvement Is Broadly Beneficial And Is A "Protective Factor" For Adolescents At Particular Risk of Substance Abuse

A. Young People Derive Important Benefits From Extracurricular Participation

It would be unwise to "minimiz[e] the importance to many students of * * * participating in extracurricular activities," *Santa Fe Ind. Sch. Dist. v. Doe*, 530 U.S. 290, 311 (2000), or "the significant place extracurricular opportunities have in the growth of [the Nation's] high school students." Pres. Proc. No. 5109, 48 Fed. Reg. 44,749 (Sep. 27, 1983).

In surveys, students regularly single out extracurricular activities as a particular source of satisfaction. *See* J. Eccles & B. Barber, *Student Council, Volunteering, Basketball, or Marching Band: What Kind of Extracurricular Involvement*

Matters?, 14 J. ADOLESCENT RES. No. 1 at 10, 19 (1999); P. Winne & J. Walsh, *Self-Concept And Participation In School Activities Reanalyzed*, 72 J. EDUC. PSYCH. 16 (1980). Indeed, "[s]tudents participating in a number of activities * * * express greater satisfaction with the *total high school experience* than students who do not participate," Nat'l Fed. of State High School Ass'ns, *The Case For High School Activities* at 5 ("*Case For Activities*") (emphasis added).

Moreover, "many students * * * wish to pursue post-secondary educational training and/or professional vocations requiring experience [that can be] garnered *only* by participating in extracurricular activities," *Trinidad Sch. Dist. No. 1 v. Lopez*, 963 P.2d 1095, 1109 (Colo. 1998) (emphasis added). And students – and parents – are acutely aware of another tangible benefit: a strong record of extracurricular involvement is all but essential to securing admission to a competitive undergraduate college.

But the beneficial effects of extracurricular participation extend beyond the ones most immediately apparent. As President Reagan highlighted, participants:

> gain key insights into the roles which competition and cooperation play in our society. Moreover, these experiences help students to learn to set and achieve goals, to organize their time effectively, and to enhance the social skills that are needed to enjoy and succeed in life.

48 Fed. Reg. at 44,749.

Empirical research confirms that students who participate in extracurricular activities are more likely to stay in school, earn higher grades, and to set – and achieve – more ambitious educational goals. *See* Eccles & Barber, *supra*, at 25 (finding "clear evidence" that participation in extracurricular activities

produces higher than expected GPAs); J. Mahoney & R. Cairns, *Do Extracurricular Activities Protect Against Early School Dropout?* 33 DEV. PSYCH. 241 (1997) (yes); F. Newman, *et al.*, *The Significance And Sources of Student Engagement* in STUDENT ENGAGEMENT AND ACHIEVEMENT IN AMERICAN SECONDARY SCHOOLS (F. Newman ed., 1992); NAT'L CTR. FOR EDUC. STATS., EXTRACURRICULAR PARTICIPATION & STUDENT ENGAGEMENT (1995).

Finally, these benefits have been found to be enduring. A study conducted by the American College Testing Service concluded that the factor that best predicted success and later life satisfaction (more than school grades or scores on standardized tests like the ACT) was participation in high school activities. *Case For Activities* at 5; *see also* M. Glancy, *et al.*, *Adolescent Activities And Adult Success and Happiness: Twenty-Four Years Later*, 70 SOC. & SOC. RES. 242 (1986).[2]

The many positive outcomes associated with extracurricular participation resonate with broader understandings of the defining challenges and tasks of adolescent development. Thus, because extracurricular pursuits are freely chosen, they can play a benign role in the normative adolescent process of "trying out" identities. *See* Eccles & Barber, *supra* at 30. And activities enable young people to take on greater individual responsibility, to strengthen bonds with like-minded peers, *id.* at 29, forge relationships with caring adults, and strengthen self-esteem.

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[2] *Accord* L. Otto, *Extracurricular Activities in the Educational Attainment Process*, 40 RURAL SOC. 162 (1975); L. Otto, *Extracurricular Activities in the Status Attainment Process*, 41 RURAL SOC. 217 (1976); S. Lamborn, *et al.*, *Putting School in Perspective: The Influence of Family, Peers, Extracurricular Participation & Part-Time Work On Academic Engagement*, in STUDENT ENGAGEMENT, *supra*.

Values and habits inculcated in extracurricular involvement are, broadly speaking, "prosocial" – and readily applied in other spheres. Thus, those who involve themselves in high school activities come to define success in ways that are "conventional" – *i.e.*, fundamentally consistent with how their schools, parents, and broader adult society do.

B. Participants Are Far Less Likely To Use Alcohol, Tobacco Or Other Drugs Than Are Less Involved Peers

A fair reading of the record in this case indicates that substance abuse by the students subject to the Policy is exceedingly rare, *see* 242 F.3d at 1273 – and almost certainly less common than among students who are not tested. J.A. 119.

Research establishes that Tecumseh is, in this respect, representative. Nationwide, students who participate in extracurricular activities are significantly less likely to develop substance abuse problems than are their less-involved peers. *See* N. Zill, *et al., Adolescent Time Use, Risky Behaviors and Outcomes* (U.S. Pub. Health Serv. 1995) ("students who reported spending no time in school-sponsored activities were 49 percent more likely to have used drugs"); L. Shilts, *The Relationship of Early Adolescent Substance Use to Extracurricular Activities, Peer Influence, and Personal Attitudes*, 26 ADOLESCENCE 613, 615 (Fall 1991) (finding that among adolescents studied, "the non[drug]using group reported significantly higher involvement in extracurricular activities as compared to the using and abusing groups").[3]

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[3] *Accord* M. Resnick, *et al., Protecting Adolescents From Harm: Findings From the National Longitudinal Study on Adolescent Health*, 278 JAMA 823, 828-30 (1997) (finding that higher levels of connectedness to school were associated with less frequent alcohol and marijuana use).

C. Extracurricular Involvement Plays An Important, Protective Role

Amici do not doubt that these dramatic differences can be attributed – in part – to processes of self-selection. It is increasingly understood that the risks of substance abuse are not uniformly distributed across the adolescent population, R. Jessor, *New Perspectives on Adolescent Risk Behavior* in NEW PERSPECTIVES ON ADOLESCENT RISK BEHAVIOR 3-5 (R. Jessor, ed., 1998) (summarizing research identifying biological, psychological, family and social factors that contribute to risk of drug involvement), and it is entirely plausible that young people who are already well protected from substance abuse are the same ones who are more likely to join in school-based activities. But, we would note, recognizing these differences hardly buttresses Petitioners' Policy: to acknowledge that extracurricular participants are *less likely* to become involved in substance abuse would not seem an argument *in favor* of a policy that tests *only* students who fall in that category.[4]

But it is also clear that self-selection is not a complete explanation. Many individuals with multiple "risk factors" do

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These findings extend to other problem behaviors. Zill *et al.* found students uninvolved in school-sponsored activities were also 57 percent more likely to drop out, 37 percent more likely to have become teen parents, 35 percent more likely to have smoked cigarettes, and 27 percent more likely to have been arrested. Notably, a number of researchers have found one class of school activities to be *positively* correlated with one unhealthy behavior: high school *athletes* use *alcohol* more – and more heavily – than do peers. *See*, e.g., Zill, *et al.*

[4] *Cf.* D. Elmquist, *Alcohol And Other Drug Use Prevention For Youths At High Risk And Their Parents*, 18 EDUC. & TREATMENT OF CHILDREN, No. 1 (1995) (prevention efforts that focus "on generic youths and their parents * * * divert[] badly needed resources from a small but at-risk target group to a larger but relatively healthy general population").

not become involved with alcohol or drugs, and there is mounting empirical support for the conclusion that extracurricular participation plays an independent, "protective" role – especially for students who are at higher risk. *See, e.g.*, L. Steinberg & S. Avenevoli, *Disengagement From School*, in NEW PERSPECTIVES, *supra* at 420; M. Ensminger & H. Juon, *Transition To Adulthood Among High-Risk Youth* in *id.* at 387.[5]

The most obvious way that extracurricular activities protect vulnerable adolescents is simply by extending the time spent under adult supervision. *See* C.A. App. 519 (Board President's testimony that "if [students] are kept busy with activities from school they don't have as much time on their hands to go and mingle and drive up and down the street"). But while the *nature* of this effects need no elaborate explanation, its full significance is probably less well appreciated.

As a 1992 Carnegie Corporation study entitled A MATTER OF TIME: RISK AND OPPORTUNITY IN THE NONSCHOOL HOURS documented, fully *40%* of adolescent waking hours are "discretionary," *i.e.*, not committed to school, homework, employment, or chores, and subsequent research has highlighted the vastly disproportionate incidence of adolescent drug use and other dangerous behavior during the unsupervised hours between the end of classes and parents' return home in the evening. *See* U.S. DEP'T OF EDUC. & U.S. DEP'T OF JUSTICE, "SAFE AND SMART": MAKING AFTER-SCHOOL HOURS WORK FOR KIDS (1998) (collecting research on disparate rates of drug use, cigarette smoking, violence, and vandalism

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[5] *See also* D. Davalos, *et al.*, *The Effects of Extracurricular Activity, Ethnic Identification and Perception of School on Student Dropout Rates*, 21 HISP. J. BEH. SCI., No. 1 at 61 (1999) (Mexican-American students involved in nonathletic extracurricular activities are 2.3 times more likely to stay in school than those not involved).

occurring during this time period). Providing structured, positive activities that – like Tecumseh's band, choir, and academic team – meet during those hours appreciably lowers risk. *See* Nat'l Inst. on Out-of-School Time, *Fact Sheet on School-Age Children's Out-of-School Time* (March 2001).

But the mere fact of timely adult supervision is not the only way that extracurricular involvement is protective. As noted above, by joining an extracurricular activity, students affiliate with peers who themselves tend to be more secure and motivated, and come to know faculty members in a less formal setting than the typical classroom. These positive social supports and networks play a critical role in periods of heightened stress. Eccles & Barber, *supra* at 29 ("over time, the coalescence of one's personal identity, one's peer group, and the kinds of activities one participates in * * * can shape the nature of one's pathway through adolescence"). Achievement of extracurricular success can be an important source of confidence and positive self-concept, *see* R. Cook, *The Alternatives Approach Revisited: A Biopsychological Model and Guidelines and Application*, 20 INT'L J. OF THE ADDICTIONS, No. 9 at 1399 (1985), and participation helps to internalize values, attitudes, and habits that make antisocial behaviors less attractive. *See* Steinberg & Avenevoli, *supra*, at 420.

III. A Policy Like Tecumseh's Will Operate, Unjustifiably, To *Deny* Important Benefits And Anti-Drug Protections

The premises of Petitioners' defense of the Policy are straightforward: (1) that students – precisely because they value extracurricular activities so highly – will choose the participation-with-drug-testing option (rather than the alternative, "dropping out" of the choir or academic team); (2) that the threat of detection will steer participants away from

unhealthy behaviors; and (3) that the students whose use is detected will benefit from the interventions provided for. Careful examination, however, casts doubt on each of these assumptions.

A. Many Students Find Testing Policies Intensely – Or Intolerably – Intrusive on Privacy

As already discussed, for the overwhelming majority – perhaps all – the individuals to whom Tecumseh's Policy applies, any constitutional "balancing" would be literally one-sided. There is no evidence that the students targeted were in need of the interventions that ensue from testing positive under the Policy or of any deterrent beyond those already in place. But to the extent that there is any public interest on the District's side of the "balance," it is critical that the full magnitude of the countervailing, student interests be accurately appraised. *See Vernonia*, 515 U.S. at 661 (asserted government interest must be "important enough to justify the particular search at hand").

Careful appraisal is especially necessary here, because the Policy's privacy intrusion operates in two distinct ways. Not only does it represent the price exacted from *every* student who decides *to proceed* with participation in the covered activities, but it also raises the prospect that some students will, based on that cost, opt not to – thereby missing *both* the benefits of extracurricular participation *and* whatever advantages Petitioners claim for their drug-testing regime.[6]

1. The Urine Collection Is Itself A Significant Intrusion

[6]Although these latter effects, strictly speaking, may belong (as debits) on the "public interest" side of the constitutional ledger, their Fourth Amendment significance is beyond question. *Chandler*; *Ferguson v. City of Charleston*, 121 S. Ct. 1281, 1289 n.14 (2001).

Although the protocols for urine collection in this case are not fundamentally different from those used in *Vernonia*, many adolescents, we believe, would take issue with the conclusion that the impact of a regime like Tecumseh's on their privacy interests is "not significant." 242 F.3d at 1276.

First, unlike the student athletes in *Vernonia*, the students affected by these policies – debaters, future farmers and choir members – have no less an expectation of bodily privacy than do fellow students who do not participate in competitive extracurricular activities. No physical examinations are required in connection with participation in these activities, J.A. 196, nor does participation entail the sort of surrender of privacy associated with the athletic locker room.[7]

For young people who are not inured, as many student-athletes are, to routine "communal undress" (in the presence of coaches, as well as peers), 515 U.S. at 657, procedures of the sort Tecumseh uses can be intensely uncomfortable. As this

[7]The analogy to administrative inspections of regulated businesses, *see New York v. Burger*, 482 U.S. 691 (1987), which held reasonably well in *Vernonia*, makes no sense here. A defining feature of those searches is that they are necessary to serve the specific purpose that led to regulation in the first place, *see* 482 U.S. at 704 – just as many of the rules governing school *athletic* competition deal with participants' physical health and safety. But even if Future Farmers or Future Homemakers could be described as "closely regulated"– in the sense that participants are subject to more rules than other students – nothing in the relevant "regulatory" regimes would diminish a participant's expectation of *bodily* privacy.

This Court's unconstitutional conditions cases teach a similar lesson: "the government may not require a person to give up a [property] right [in exchange for a] discretionary benefit conferred by the government where the benefit sought has little or no relationship to the property." *Dolan v. City of Tigard*, 512 U.S. 374, 385 (1994); *see also Indianapolis v. Edmond*, 531 U.S. 32, 42-43 (2000); *Weisman*, 505 U.S. at 595.

Court has recognized, the act of urination is one that society treats as quintessentially private: urination in public is the subject of almost universal social disapproval and legal prohibition; urine is treated as waste, to be promptly disposed of; and even among mature adults, the subject is referred to, euphemistically, if at all. *Skinner v. Railway Labor Execs. Ass'n*, 489 U.S. 602, 617 (1989).[8]

Moreover, although it is undeniable that "the normal sounds of urination," J.A.199, may be overheard by others in a public restroom, it is neither common nor acceptable for other rest room users to stand outside the stall listening intently, as do monitors here, for those sounds. *See, e.g., Harkey v. Abate* 346 N.W.2d 74, 76 (Mich. App.1983); *see also Bond v. United States*, 529 U.S. 334 (2000) (finding intrusion on legitimate privacy expectation when government agent's physical manipulation of defendant's luggage "far exceeded the casual contact * * * expected from other passengers"). Indeed, for a substantial number of American *adults*, even use of a public restroom in the presence of others who are there entirely for their own reasons is a difficult and acutely stressful experience. R. Kessler, *et al.*, *Social Phobia Sub-Types In The National Co-Morbidity Study* (Harvard Medical School 1997) (estimates of incidence of aversion pareusis); *see also Lopez*, 963 P.2d at 1100 (noting instance of student who "tried five, six, seven times, * * * but could not urinate into the container because he was embarrassed to do so").[9]

While medical offices are an exception to the practice of

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[8] *See also* C. Fried, *Privacy*, 77 YALE L.J. 475, 487 (1968) ("in our culture the excretory functions are shielded by more or less absolute privacy, so much so that situations in which this privacy is violated are experienced as extremely distressing, as detracting from one's dignity and self esteem").

[9] *See generally* S. SOIEFER, ET. AL., SHY BLADDER SYNDROME (2001).

promptly disposing of urine once excreted, medical specimen collection occurs against a background – absent here – of developed patient privacy expectations and professional norms. *See Ferguson*, 121 S. Ct. at 1289. Morever, even in doctors' offices, steps are taken to avoid patient embarrassment. *See generally* S. SORRENTINO, MOSBY'S TEXTBOOK FOR NURSING ASSISTANTS (4th ed. 1996). There is no face-to-face discussion concerning the temperature or clarity of the sample.

The sense of anxiety and shame that many mature adults feel are experienced far more keenly by students subject to procedures like Tecumseh's. Many adolescents are particularly uncomfortable about their developing bodies and intimate bodily functions. A. Peterson & B. Taylor, *The Biological Approach to Adolescence: Biological Change and Psychological Adaption*, in HANDBOOK OF ADOLESCENT PSYCHOLOGY 117, 144 (J. Adelson ed., 1980); S. Harter, *Causes and Consequences of Low Self-esteem in Children and Adolescents* in SELF-ESTEEM: THE PUZZLE OF LOW SELF-REGARD 87 (R. Baumeister ed., 1993) (research finding body image is strongest unique predictor of overall feelings of adolescent self-worth).

And the individual whom the Policy charges with conducting the test – including confronting the student with the warmth and clarity of her sample – is not an anonymous medical professional: it is a teacher or coach – a familiar adult who may well play a powerful authority role in the student's daily school experience. *Compare* 115 F. Supp. 2d at 1291 n.39 *with Von Raab*, 489 U.S. at 661 (independent contractor collected urine) and *Skinner*, 489 U.S. at 609, 626-27 (urine collected at "independent medical facility," by personnel "unrelated to the railroad employer").

Feelings of unease can be intensified, finally, by the public

way in which testing is conducted. In Earls's case the announcement that particular students were to be tested was made to a large assembled group and met with "giggl[ing] and snicker[ing]." 115 F. Supp. 2d at 1291 n.38; *cf. Fraser*, 478 U.S. at 678 (noting that some students "hooted and yelled" at lewd speech, while others "appeared to be bewildered and embarrassed"). This, too, is without analogue in the medical office setting.

2. Students' Privacy Concerns Extend Beyond The Collection Process

Another aspect of the Policy is likely deepen students' apprehension. As part of their "consent" to testing, the Policy requires the student to list prescription medications she has recently used. J.A. 205. The sort of information such a list might disclose – relating to subjects such as treatment for depression, hyperactivity, HIV, and sexually transmitted disease – is precisely the kind that carries strong stigma in the school environment and about which young people affected often feel shame. *See, e.g.*, A. Crocker, *et al.*, *Supports for Children with HIV Infection in School: Best Practices Guidelines*, J. SCH. HEALTH 64, 32-34 (1994).[10]

Although the Policy provides that this information will be treated as confidential, the possibility that *anyone* in the school environment might come to learn such information is an unsettling one. *See* Crocker, *et al.* (recommending that "few, if any, school personnel should receive information about a

[10]The Policy also requires that a student's *parents* "confirm" the medications she lists when giving the sample. J.A. 199. But in Oklahoma and many other States, minors are entitled to obtain treatment for sexually transmitted diseases and other serious, but potentially embarrassing, medical conditions without parental notification or consent. OKLA. STAT. 63 § 1-532.1.

student's HIV status" and stressing that decision to inform school concerning student's HIV status should rest with student and parents); *compare Von Raab*, 489 U.S. at 672 n.2 ("an employee need not disclose personal medical information to the Government unless his test result is positive, and even then any such information is reported to a licensed physician").

Moreover, even a pledge of confidentiality cannot eliminate the *risk* (and fear) that the information will be disclosed inadvertently, *see* J.A. 129-32 (evidence that choir teacher looked at students' prescription drug lists and left them where other students could see them) -- or that, in a community of Tecumseh's size, intimate information about the young person's medical or mental health will make its way "all over town." *Cf.* J.A. 85-88 (School Board President's description of her conversations at local supermarket).

B. Students Will Be Deterred From Extracurricular Involvement, With Far-Reaching, Negative Consequences

Some students, to be sure, will experience even these intrusions and privacy risks as untroubling – and others will make the judgment that valued extracurricular activities are worth what they perceive to be a high price. But, both the evidence in this case, *see* 115 F. Supp. 2d at 1291 n.38, and a broader body of research concerning adolescent attitudes strongly suggest that, under policies such as Tecumseh's, a significant number of students will respond by choosing not to participate.[11]

[11]In its Brief, Tecumseh dismisses students uncomfortable with these intrusions as "'bashful,'" *id.* at 34 (quoting *Vernonia*, 515 U.S. at 657), and asserts, as if the proposition were self-evident, that activities such as Future Homemakers and academic team are "not for [them]."

To the extent that these students are as plaintiff Earls seems to be – young people with "nothing to hide," by way of substance use, but whose principles or personal sense of modesty nonetheless make the testing regime intolerable – the losses are obvious enough.[12] Such students, who need no further deterrence, let alone treatment – are denied the benefits catalogued above. They are cut off from school friends who share their interests; they may find themselves the subject of suspicion or rumor concerning what the screens would have revealed; and their candidacies for admissions to competitive college will almost certainly be prejudiced. *Cf. Weisman*, 505 U.S. at 595 ("absence [from graduation] would require forfeiture of those intangible benefits which have motivated the student through youth and all her high school years").

Perhaps worse still, there is good reason for concern that the students most likely to exercise the option not to participate will be those at the "margins" – whose interest in extracurricular activities may be tentative and undeveloped, and who are more likely to have (or feel they have) something to conceal from their peers and teachers. For example, among the adolescent populations who are considered at particular risk for substance abuse are young people suffering from depression, *see, e.g.*, E. Deykin, *et al.*, *Adolescent Depression, Alcohol and Drug Abuse*. 76 AM. J. PUB. HEALTH 178 (1987), and those with substance abuse problems in their family background, *see, e.g.*, D. Baumrind, *Familial Antecedents of Adolescent Drug Use*, in ETIOLOGY OF DRUG ABUSE: IMPLICATIONS FOR PREVENTION (U.S. Dep't. H.H.S. 1985). But as we have explained, it is precisely these students for whom the benefits – and protections – of extracurricular programs are most valuable. *See* Steinberg

[12] At her deposition, Earls testified that she did not know what the substances tested for even look like. J.A. 108.

& Avenevoli, *supra*, at 420 (finding that "youngsters who reported a relatively fragile orientation toward school * * * are * * * significantly more likely to use drugs and alcohol").

In this regard, one specific subpopulation should be of particular concern: young people who have already had problems with substance abuse and are in recovery. It is a telling reminder of how unusually *minor* Tecumseh's experience with drug abuse is that the Policy's effect on such students apparently was not considered.

For such students, for whom low self-esteem and weak connection to school are often critical problems, *see* D. Wasson & M. Anderson, *Chemical Dependency and Adolescent Self-Esteem*, 1995 CLINICAL NURSING RES. 274, the potential benefits of extracurricular involvement are substantial. *Cf.* J. Nation & J. Benshoff, *Therapeutic Recreation Programs for Adolescents in Substance Abuse Treatment Facilities* 62 J. REHAB. 10 (Oct. 1996). But young people recovering from substance abuse will be most unlikely to run a gauntlet like the one erected here. Not only are they less likely to have friends already involved in activities, but adolescents who have been through treatment are very conscious of the likelihood of relapse, *see* J. Baer, *et al.*, *Linking Etiology & Treatment*, in NEW PERSPECTIVES, *supra*, at 201 (summarizing studies finding high rates of relapse among adolescents), and to the extent that they have successfully kept past troubles with alcohol or drugs from peers and teachers, the prospect of airing their problems in the school setting is likely to be an especially daunting one.[13]

[13] *See* AAP Comm. on Substance Abuse, *Indications for Management and Referral of Patients Involved in Substance Abuse*, 106 PEDIATRICS 143, 146 (July 2000) ("Relapse is an expected part of recovery").

IV. The Policy Is Ill-Suited To The Public Health Purposes Claimed For It

A. Drug-Testing Regimes Like Tecumseh's May Not Lead To More Healthy Behavior

In this Court, the District and its *Amici* have striven to defend Tecumseh's policy as preventative *in effect*. Whether or not the District has real substance abuse problems – and even if the Policy actually was adopted for reasons that are symbolic, rather than special – it is argued, such policies are needed to prevent the *onset* of an "epidemic" of unhealthy behavior of the sort described in *Vernonia*, *see* 515 U.S. at 663. No record evidence is identified to support these claimed preventative benefits, and there are important reasons why Petitioners' confidence in them is likely misplaced.

First, although lawyers, we recognize, often reflexively discount problems of under-inclusion, *see Williamson v. Lee Optical, Inc.*, 348 U.S. 483, 489 (1955), it is troubling, from a public health perspective, that Tecumseh's Policy omits – for practical reasons – any screen for the two substances that *it has attested* are its students' most serious problems: alcohol and tobacco. *See, e.g.*, J.A. 176 (1996-97 report that "the use of tobacco and alcohol continue to be our number one problems"); *cf. Greater New Orleans Broad. Ass'n v. United States*, 527 U.S. 173, 190 (1999) (concluding that regulatory regime "pierced by exemptions and inconsistencies" does not "materially advance" government's interest).

The harms associated with adolescent alcohol and tobacco use have been at least as extensively documented as for those drugs for which Tecumseh does screen. *See* PREVENTING TOBACCO USE AMONG YOUNG PEOPLE: A REPORT OF THE SURGEON GENERAL (1994); AAP Comm. on Substance Abuse, *Alcohol Use And Abuse, A Pediatric Concern*, 108 PEDIATRICS

185 (July 2001). Indeed, the evidence shows not only that nicotine is highly addictive – meaning that youthful experimentation *typically* leads to life-long unhealthy behavior – but that individuals who manage to avoid cigarette smoking in their teens are highly unlikely ever to begin. SURGEON GENERAL'S REPORT at 67. The consequences of adolescent alcohol ingestion – by far the most widespread of all youth substance abuse problems – can be even more tragic and irreversible. *See* Centers for Disease Control, *Mortality Trends, Causes of Death And Related Risk Behaviors Among U.S. Adolescents* (1993).[14]

The risk that the Policy will be understood to signal that alcohol and tobacco are of lesser danger is not an idle concern. Both products are legal for adult consumption, and parents (and teachers) are far more likely to use those substances than the drugs of abuse for which Tecumseh tests. *See* D. Kandel, *Persistent Themes and New Perspectives on Adolescent Substance Abuse* in NEW PERSPECTIVES, *supra* at 50 (adolescents whose mothers smoke one pack a day are nearly eight times more likely to smoke – 46% vs. 5.9% – than children of non-smoking mothers). Indeed, a central challenge of youth tobacco and alcohol prevention efforts is to overcome the misperception that such substances are not as serious a health concern as substances prohibited to all. "For this reason, prevention specialists and drug educators, including many in government have begun to use the term '*alcohol, tobacco, and other drugs.*'" R. WILSON & C. KOLANDER, DRUG ABUSE PREVENTION 5 (1992) (citing Office of Substance Abuse Prevention, "Editorial Guidelines").

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[14]Thus, the federal statutory provision cited as supplying the "interest of the United States" in this case seeks "'to combat illegal alcohol, tobacco, and drug use.'" U.S. Br. at 1 (quoting 20 U.S.C. § 7116(b)(2)(C)).

But even if the school set out to counteract this impression, by disseminating information stressing the dangers of alcohol and tobacco use, the *design* of the Policy – attaching negative consequences to marijuana, but not alcohol, use – still leaves students who are inclined toward unhealthy behavior an obvious option: they may participate in extracurricular activities, pass the drug screens, and continue to "experiment" *with alcohol*. Indeed, this strategic response is an especially realistic danger: while marijuana and other illegal substances must be purchased from drug dealers, whose conduct is subject to detection by school and law enforcement officials, alcohol is widely available in stores and students' homes. *See* Resnick, *et al.*, *Protecting Adolescents* 278 JAMA at 831 (finding that ready availability increases likelihood of use).

Finally, adolescent development research points to yet another troubling problem. Although, as already discussed, many students' predominant negative reaction to school drug-testing will be *embarrassment*, others are likely to react with *resentment*. Drug-testing of the kind at issue is perceived – understandably – by many adolescents as an expression of adult mistrust and suspicion. Such perceptions can trigger oppositional behavior – including actions that will enable students to "beat" the test, *i.e.*, defying its drug-use-prevention purpose, while obtaining a "clean" result from the testing laboratory. Unlike marijuana, several of the most physically harmful drugs tested for do not stay in the body long enough to make detection through random urine screening a realistic possibility, J.A. 70, 142, and other widely abused substances, such as "ecstasy" and LSD, are not tested for at all. J.A.71.

B. The Policy Ill Serves The Treatment Needs Of Students Who *Do* Have Substance Abuse Problems

As we noted above, for a policy that purports to deal with

a "real" substance abuse problem, Tecumseh's indicates scant attention to the health needs of students who actually *are* chemically dependent. Whether Petitioners are right that the Policy is undeserving of the "punitive" label, *see* Br. at 8-9 (highlighting inclusion of treatment component and gradual way in which sanctions are imposed), its "consequences" are still more likely to hinder, rather than promote, recovery.[15]

First, neither of the policy's two principal sanctions – forced withdrawal from extracurricular involvement (the one expressly provided for) and public exposure (its near-certain consequence) – can be expected to help a young person who has become chemically dependent to return to healthier behavior. Whether or not an adolescent recovering from a substance abuse problem perceives the full value of extracurricular participation, he is especially likely to *benefit* from the opportunities afforded for structure, supervision, and interaction with drug-averse peers. *See* M. GONET, COUNSELING THE ADOLESCENT SUBSTANCE ABUSER 156 (1994) ("reentry into high school is especially difficult for recovering teenagers * * * *At the very time that they are integrating their new behaviors and new identity into their every day school life, they must face their former drug dealers and closest drug-using friends").

Equally troubling is the second sanction: disclosure of the positive test result to those within the school community. Putting aside the near certainty that the information will become known beyond those individuals denominated as "need[ing] to know" (both through careless discharge of confidentiality

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[15]There surely is tension between Petitioner's insistence that the Policy's adverse consequences are so mild as to not amount to "punishment" and their confidence in its deterrent powers. *Cf. Kansas v. Crane*, 2002 WL 75609 at *4 (2002) (stressing that deterrent purpose is key to distinguishing criminal from remedial regime).

responsibilities and by inference from a student's sudden "disappearance" from chosen pursuits), the disclosures that the Policy expressly contemplates – to coaches and faculty supervisors – are themselves likely to intensify feelings of shame and futility that adolescents facing chemical dependency must manage.

For some students (*e.g.*, those new to the school), the faculty supervisor will essentially be a stranger, low on the list of persons whom the student (or her parents) would choose to share highly sensitive personal health information. In other cases, the supervisor may be a venerated authority figure, whom the student feels ashamed for having disappointed or with whom she would be deeply uncomfortable discussing family or mental health problems that contributed to drug use.

Finally, some students will have very different, closer relationships with the teachers who supervise their extracurricular activities. But the Policy, by casting teachers in the role of front-line enforcers (and sometime specimen collectors) can operate to interfere with the kind of open and honest communication with a supportive adult that is critically important for recovering adolescents.

V. Tecumseh's Policy Does Not Respect The Proper Allocation of Responsibility Among Parents, Doctors And Schools

A. Drug-Use Detection Is Not A Necessary Part of Public Schools' Core Responsibilities

While this Court's decisions express reluctance to interpret the Constitution in ways that interfere with public schools' responsibilities as "guardian and tutor," – to assure the safety of students entrusted to their care and regulate conduct that impairs the teaching process, *see Fraser*; *T.L.O.*– Tecumseh's

Policy does not fit that description. Notwithstanding images conjured of out-of-control cutlery, animals run amok, and colliding tubas, the activities for which testing is imposed are not fairly described as highly safety-sensitive, *compare Skinner* (train operation); *Vernonia* (tackle football), and there is no suggestion here of wholesale behavioral disturbances that might overwhelm the school's ability to maintain classroom order by enforcement of ordinary rules governing student conduct.

To the extent that any misbehavior is believed "drug fueled," *Vernonia*, 515 U.S. at 663, the school has the authority – unchallenged by Plaintiffs – to subject the offending individual to a urine screen, J.A. 198, and the school's many other anti-drug measures, ranging from its rules against possession on school grounds, to preventative education, to the presence of mounted cameras and drug-sniffing dogs, have already, by the District's own estimation, succeeded in keeping any drug problem to minor proportions. J.A. 180.

B. Schools' Pursuit Of Generalized Student Health Objectives Are – And Must Be – More Respectful of Parental And Medical Judgment

In seeking to detect student substance use that *does not* manifest itself in suspicious or prohibited school behavior (and does not arouse the curiosity of the trained dogs), Tecumseh's Policy is better described as resting on a more generalized concern for the health and well-being of its students.

There is nothing illegitimate about a public school's seeking to advance this sort of public health purpose. Indeed, schools play an important and growing role in public health promotion generally, *see* AAP Comm. on School Health, *School Health Assessments*, 105 PEDIATRICS 875 (Apr. 2000), and drug prevention, in particular. But when schools range beyond their traditional realm – and seek to address conduct

that neither occurs nor manifests itself in the school environment, it becomes incumbent that they do so sensitively to the interests and judgment of parents and health professionals.

Indeed, while Petitioners and their *Amici* liken the regime to mandatory immunization laws, *see* Br. at 26; *see also Vernonia*, 515 U.S. at 656 (noting that public schools "provide vision and hearing screening, dental and dermatological checks, and scoliosis screening") – those school-based health measures operate, in relevant respects, strikingly *differently* from the one defended here.

First, while public (and private) school students in Oklahoma and elsewhere must be vaccinated in order to attend school, *see, e.g.*, OKLA. STAT. 63 § 1210.191, those requirements are not imposed *by school boards* on *educational* grounds. They instead reflect *medical* judgments of State health officials. *See id.* ("Board of Health by rule, may alter the list of immunizations required").

Moreover, while schools might – as a matter of convenience – administer vaccinations on-site, parents are free to obtain them from any "licensed physician," *id.*, and, tellingly, even Oklahoma's mandatory-immunization provision is construed to incorporate an exception for when a physician certifies that "immunization would endanger the life or health of the child *or* [t]he parent or guardian * * * submits a written statement objecting to such tests or immunization on *medical, religious or personal grounds*." Op. Atty. Gen. No. 76-293 (Aug. 5, 1976) (emphasis added).[16]

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[16] *See also* Pub. L. 107-110 ("No Child Left Behind Act") § 1061(c)(2)(C)(A)(ii), (C)(iii) (providing parental right to opt out of "any non-emergency, invasive physical examination or screening that is [] required as a condition of [school] attendance").

C. Tecumseh's Policy Fails To Respect Parental Prerogatives And Medical Expertise

Tecumseh's drug testing Policy shows no similar respect for the judgments of doctors and treatment experts – or wishes of parents. The urine screen is administered in school only, under circumstances when testing is considered medically inappropriate, *see generally Testing for Drugs of Abuse* 98 PEDIATRICS at 305-07, and in a manner that departs from professional norms, *id.*, – without regard for the student's or parents' wishes or the medical judgment of his pediatrician. The results – and other medically sensitive information – are shared with individuals with no defined counseling or health responsibility, whose personal connection to the student may be tenuous, and the Policy's choices of substances to test for and sanctions to impose were made without regard for generally accepted substance abuse prevention and treatment principles.

The displacement of *parental* authority is at least as serious and no more justified. Although Petitioners invoke "pleas by parents who know their children are using drugs," Br. at 39, the Policy trammels, rather than vindicates, parental rights. No School Board vote was needed in order for a Tecumseh parent to subject his son or daughter to a random urine test (presumably the District could have offered to conduct such testing on its premises, just as it might offer flu shots) – and nothing prevented a parent from making the judgment that her child's positive test result merited "suspension" from one or all the student's extracurricular activities – or from determining that there were teachers and administrators at the school who would "nee[ed] to know" the results.

Tecumseh's Policy changed this *status quo* in four respects.

It made the school restroom the lone acceptable venue for drug-testing and the school's faculty, the only permissible class of specimen collectors. It imposed a uniform regime of suspension from extracurricular involvement and disclosure to the "need-to- know" group in every instance where a substance is detected, foreclosing any role for individualized, student-specific parental – or pediatric – judgment. It simply overruled the judgments of parents who, for a variety of reasons, would want their children to participate in Tecumseh's extracurricular activities, but *not* its testing and "treatment" regime. Finally, it enabled those parents who *want* their children tested to delegate to school personnel responsibility for doing so and for fixing the "consequences" that would ensue when urine tests positive.

The first three of these changes are unambiguously negative. For the reasons canvassed above, a regime where parents play their ordinary role – with the school maintaining its commendably vigilant enforcement of its conduct regulations – would far better serve the preventative purposes advanced by Petitioner.

To the extent that the fourth – enabling parents to delegate drug prevention responsibility to the school – is a "benefit" in any sense, it is not one deserving positive weight in the public health or calculus. *See, e.g.*, H. Chilcoat, & J. Anthony, *Impact of Parent Monitoring on Initiation of Drug Use*, 35 J. AM. ACAD. CHILD. & ADOLESC. PSYCH. 91 (1996) (parental unwillingness to take primary role *increases* risks of youth substance abuse).

Conclusion

For the reasons stated above, *Amici* request that the Court affirm the judgment of the Court of Appeals.

Respectfully submitted,

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Description of *Amici Curiae*

Amicus Curiae American Academy of Pediatrics ("AAP") and its member pediatricians dedicate their efforts and resources to the health, safety and well being of infants, children, adolescents and young adults. The AAP today has approximately 55,000 members in the United States, Canada and Latin America. Members include pediatricians, pediatric subspecialists and pediatric surgical specialists. The AAP pursues its mission through the work of 30 committees and 51 sections, and by means including original research, public education, continuing professional education, and publication. The AAP publishes *Pediatrics*, its monthly scientific journal; *Pediatrics in Review*, its continuing education journal, as well as *Healthy Kids* magazine, manuals on a variety of topics, including school health, and a series of child care books written by AAP members.

Amicus Curiae National Education Association ("NEA"), founded in 1857, is America's oldest and largest professional organization committed to advancing the cause of public education. The NEA has over 2.5 million members who work to improve education at every level, from pre-school to university graduate programs. NEA has affiliates in every State and in over 13,000 local communities across the Nation. At the national level, NEA's work ranges from coordinating innovative projects that will improve the provision of educational opportunities to participating in deliberations about public policies that affect students, teachers, and schools.

Amicus Curiae American Public Health Association ("APHA") is a national organization devoted to the promotion and protection of personal and environmental health. Founded in 1872, APHA is the largest public health organization in the world, representing over 50,000 public health professionals. It

represents all disciplines and specialties in public health. Throughout its history, APHA has been at the forefront of numerous efforts to prevent disease and promote health. The organization publishes the *American Journal of Public Health*, a peer-reviewed journal.

Amicus Curiae National Association of Social Workers ("NASW") is a professional membership organization comprised of 150,000 social workers, with chapters in every State, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and an international chapter in Europe. Created in 1955 by the merger of seven social work organizations, the NASW has as its purpose to develop and disseminate high standards of practice while strengthening and unifying the social work profession as a whole. NASW and its members have a significant interest in policies, such as the one at issue in the present case, that negatively effect children and youth. In NASW's policy on "Civil Liberties and Justice," the Association expressed concern about the unwarranted invasion of privacy that occurs when mandatory drug testing is used as a precondition for the receipt of services for which an individual would otherwise be eligible. The Association believes the negative and chilling effect on student participation in extracurricular activities caused by mandatory pre-participation drug testing requires review and reconsideration.

Amicus Curiae National Association of Social Workers – Oklahoma Chapter ("NASW-OK") is the largest professional association of social workers in Oklahoma. Founded in 1955, it has more than 1,000 members throughout the state. NASW-OK is a member organization that seeks to enhance the effective functioning and well-being of individuals, families, and communities in Oklahoma. Its members, trained professionals with degrees in social work, practice in a wide variety of settings, including public schools. Its members have

extensive experience working with adolescents and addressing health issues, including substance abuse. Its members' experience in the schools and communities of Oklahoma, and working with Oklahoma's young people, gives NASW-OK a well informed perspective on the issues raised in this case. Its offices are in Oklahoma City, Oklahoma.

Amicus Curiae National Council on Alcoholism and Drug Dependence (""NCADD"") is the oldest advocacy organization in this country addressing America's most widely abused drug–alcohol, alone or in combination with other drugs. Founded in 1944, it has a network of 92 affiliates in 28 states. NCADD's mission is to advocate for prevention, intervention, research and treatment, and to reduce the stigma associated with alcoholism and other drug problems by working continuously to change public attitudes and behaviors.

Amicus Curiae Center for Law and Education ("CLE") is a national legal support and advocacy organization representing parents and students in efforts to improve the quality of public education. Since 1969, CLE has pursued this goal through litigation, legislative and administrative advocacy, the provision of technical assistance, and training for attorneys, parents and other advocates.

Amicus Curiae Loyola Child Law Center ("Center") houses the children's law programs at Loyola University Chicago School of Law. The Center offers an extensive interdisciplinary child law curriculum. The Center's Child Law Clinic currently represents over 100 children in cases involving education, child welfare, domestic violence, and other related areas. The Center's Legislative and Policy Program engages in systemic advocacy related to children and families. The Center's faculty train lawyers, social workers and other professionals in pediatric law and child and family advocacy. Faculty are also

involved in numerous conferences and advisory panels aimed at improving the administration of justice for children and families.

Amicus Curiae Lawyers for Children, Inc. ("LFC"), founded in 1984, is dedicated to protecting and promoting the health and welfare of vulnerable children. LFC provides free, integrated legal and social work services to over 4,000 individual children per year, in a variety of legal contexts. In addition, LFC publishes guidebooks and other materials for both children and legal practitioners, conducts professional training sessions, and seeks systemic improvement of systems affecting vulnerable children. LFC staff have consulted to other child-focused organizations throughout the country.